



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,371	10/02/2001	Noel Tenorio	020431.0917	1757
53184 7590 07/06/2009 i2 TECHNOLOGIES US, INC. ONE i2 PLACE, 11701 LUNA ROAD DALLAS, TX 75234				
EXAMINER				
CHANDLER, SARA M				
ART UNIT		PAPER NUMBER		
3693				
MAIL DATE		DELIVERY MODE		
07/06/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/970,371

**Applicant(s)**

TENORIO, NOEL

**Examiner**

SARA CHANDLER

**Art Unit**

3693

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/15/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is responsive to Applicant's arguments and request for reconsideration of application 09/970,371 (10/02/01) filed on 10/15/08.

### ***Claim Interpretation***

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. See MPEP 2106 II C. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP § 2106 II C.

Language in a method claim that states only the intended use or intended result, but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result, but does not result in a structural difference between the claimed invention and the prior art.

In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as “*if, may, might, can could*”, as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as “*wherein, whereby*”, that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct

inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

***Claim Objections***

Claim objected to because of the following informalities:

**Re Claims 30, 38, 46 and 54:** The claims recite, "receiving, by a server, from at least one of a plurality of seller computers, one or more offers, the one or more offers reflecting values specified in the one or more offers for a plurality of seller offer variables;"

Should this be -- receiving, by a server, from at least one of a plurality of seller computers, one or more offers, the one or more offers reflecting values specified for a plurality of seller offer variables; -- ?

The phrase appears awkwardly worded.

**Re Claims 30, 38, 46 and 54:** The claims recite, " receiving, by a buyer computer, a buyer request, the buyer request comprising a plurality of values for a plurality of buyer offer variables;"

Should this be -- receiving, by a buyer computer, a buyer request, the buyer request comprising values for a plurality of buyer offer variables; -- ?

The phrase appears awkwardly worded.

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 46-53** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. .

**Re Claims 46 - 53:** The preamble of claim 46 recites, "Software for generating an order in an electronic marketplace .....". Dependent claims 40 through 53 recite, "The software of Claim 46 ....." Software per se is not one of the enumerated categories of patent eligible subject matter. Would language such as,

Applicant should consider language similar to, "A computer readable medium having executable instructions which when executed cause a computer to perform steps comprising:" The key is the "computer readable medium" and "executable instructions/code". Dependent claims 40 through 53 should similarly recite, "The computer readable medium of Claim 46 ...."

Dependent claims are rejected based on the same rationale as the claims from which they depend.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 30-54** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Re Claims 30, 36 and 37:** Should “operable to” be -- configured to --? Language such as “operable to” is similar to the “adapted to” or “adapted for” clauses discussed in MPEP § 2106 II C. These terms raise a question as to the limiting effect of the language in a claim:

**Re Claims 30, 38, 46 and 54:** The claims recite, “wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme;” Is this something the buyer computer is “configured to” do and a step or act performed as part of the process?. See remarks supra on claim interpretation. The phrase raises a question as to the limiting effect of the language in a claim:

The claims recite, “wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme;” Is this something the buyer computer is “configured to” do and a step or act performed as part of the process?. See remarks supra on claim interpretation. The phrase raises a question as to the limiting effect of the language in a claim:

**Re Claims 30, 38, 46 and 54:** The claims recite, “receive from at least one of the plurality of seller computer systems one or more offers, the one or more offers reflecting values specified in the one or more offers for a plurality of seller offer

variables;" It is unclear how the server system is able to receive the offers from the seller computer systems when the server system is only connected to the databases and the buyer computer system but, not the seller computer systems.

**Re Claim 54:** The claims recites elements using means (or step) plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. However the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function.

Applicant is required to:

1. Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph, or
2. Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or
3. State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d.) and MPEP 2181 and 608.01 (o).

.Dependent claims are further rejected based on the same rationale as the claims from which they depend.

***Claim Rejections - 35 USC § 103***



The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 30-32, 34-40, 42-48 and 50-54** are rejected under 35 U.S.C. 103(a) as being unpatentable over.

**Re Claims 30-32, 34-40, 42-48 and 50-54:** Moshal discloses a method for generating an order in an electronic marketplace, comprising:

receiving, by a server, from at least one of a plurality of seller computers, one or more offers, the one or more offers reflecting values specified in the one or more offers for a plurality of seller offer variables (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027] [0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045] plurality offers (e.g., bid/ask, seller/buyer), plurality of offer variables (e.g., #items, type, user, price, length of participation etc.);

receiving, by a buyer computer, a buyer request, the buyer request comprising a plurality of values for a plurality of buyer offer variables (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027] [0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045] plurality offers (e.g., bid/ask, seller/buyer), plurality of offer variables (e.g., #items, type, user, price, length of participation etc.);

generating, by the buyer computer, a display (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027] [0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045] plurality offers (e.g., bid/ask, seller/buyer), plurality of offer variables (e.g., #items, type, user, price, length of participation etc.) comprising:

a buyer request display (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027] [0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045]) and

an offers display of the one or more offers (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027] [0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045]);

comparing, by the buyer computer, the one or more patterns of the buyer request display with the plurality of patterns of the offers display to determine a best fit match between at least one of the plurality of patterns representing the one or more offers and the one or more patterns representing the buyer request (Moshal, Figs. 1-18; [0004] [0006] [0027] [0028] eg. closeness and position of buyer and seller objects); and

generating, by the buyer computer, an order based on the best fit match and communicating the order to the server (Moshal, Figs. 1-18; [0004] [0006] [0027] [0028] eg. consummation, order).

Moshal fails to explicitly disclose:

a buyer request display comprising one or more patterns representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and

an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme;

Regarding,

a buyer request display comprising one or more patterns representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or

more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and

an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme;

NOTE: The claimed invention would have been obvious based on any one of the following rationales:

#### Official Notice

Official Notice is taken that it was old and well-known at the time of the invention to provide a buyer request display comprising one or more patterns representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a

particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme;

Examiner notes, that the display represents a user interface. It was old and well-known at the time of the invention that a user interface provides for the presentation of information to the users and the capture of their inputs.

Documentary Evidence:

"Microsoft Press Computer Dictionary Third Edition," editor: Kim Fryer. Copyright 1997 by Microsoft Corporation. Pg. 488;  
Pearson Education. Copyright 2001 by Addison-Wesley. Pg. 11; and  
Free On-line Dictionary of Computing. Copyright 1993-2007 Denis Howe.

Examiner further notes, that it was old and well-known at the time of the invention to manipulate the presentation of the information in a variety of ways in accordance with the preferences of a particular user. These presentations included the use of patterns incorporating bars, columns, grids etc. For example, Excel programs have been used frequently in reports, slide shows and presentations to show diagrams in the form of bars, lines and other visual forms.

Documentary Evidence:

"Mastering Excel 4 For Windows," by Carl Townsend. Copyright 1992 by Sybex.  
Chapter 20, pgs. 423-454.;

Levine, US Pub. No. 2002/0178105 - Fig. 6 ;

Lee, US Pub. No. 2002/0065762 - Figs. 5-14; [0030] [0056]; and

Russell, US Pat. No. 7,020,630 - Fig. 8

See also MPEP § 2144.03.

#### Design Choice

Design choice is a **conclusion** reached by the Examiner regarding the difference between the claims and the prior art. This conclusion is based on a two prong test involving an analysis of **the totality of the record** including applicants own specification, and an analysis of whether the prior art would **perform equally as well** as the claimed subject matter.

A rejection based on design choice does not require that a reference expressly or even impliedly teach the difference between the claims and the prior art.

Applicant provides the following in the Specification:

Business transactions are increasingly taking place over the Internet and other electronic communication networks. Electronic markets may provide a forum for such transactions, allowing buyers to locate sellers, and vice versa. This process may involve a buyer (or seller) identifying one or more suitable offers to sell (or buy) from one or more sellers (or buyers). **However, it may be difficult for a buyer (or seller) to identify suitable offers to sell (or buy) from among the offers available to the buyer (or seller) for a number of reasons.** For example, there may be a relatively large amount of information for a buyer (or seller) to consider when trying to identify suitable offers to sell. The market may include a relatively large number of offers. Offers may include a number of variables, and there may be a relatively large number of possible values for each variable. **Additionally, there may be no available offers providing a substantial match with a particular order from the buyer (or seller). The buyer (or seller) may therefore have to determine which of the available offers provide a relatively close match with that order, taking into account a number of offer variables and possibly the relative priorities of such variables.**

Applicant' Specification, pg. 2 (10/02/01).

What is not made apparent from the record however, is how the particular visual patterns of the claimed invention resolves any problem, provides any advantage or is used for any purpose above and beyond what the visual patterns of the prior art can do equally well.

The visual patterns of Moshal perform equally well at identifying suitable offers to sell (or buy) for the offers available to the buyer (or seller); and enabling the buyer (or seller) to discern which offers prove the closest match to a particular order. That is, factors such as whether it is a offer, user request or order is distinguished; the price; the size; whether a user is a buyer or seller, the length of time a user has been in the marketplace; whether orders and offers are close to a match or consummating a transaction etc. are readily apparent from the visual pattern of Moshal. See Moshal, abstract, Figs. 1-18; [0001] – [0047]).

Examiner notes, whether presented as circles, bars, stars or any other visual pattern, the same problem could be resolved, the same advantage achieved, and purpose addressed. The fact that Applicant provides a pattern comprising a plurality of bars, each bar representing a particular offer variable is not the basis for a patentability determination. If that were the case, an infinite number of patents could be issued representing the offer and the offer variables as lines, or arrows or any other symbol and none would be any less obvious in light of Moshal.

See also *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975)

Nonfunctional Descriptive Material

Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. See MPEP § 2106.01.

Examiner notes that, "a buyer request display comprising one or more patterns representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme," is interpreted as a compilation or mere arrangement of data. The visual pattern of the data does not provide a functional interrelationship, and is considered to be non-functional descriptive material and not entitled to patentable weight.

See also *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983).

Thus, based on any of the above rationales, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Moshal to provide a buyer request display comprising one or more patterns



representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme;

As suggested by Moshal, users should have access to an easily understandable version of a the current state of critical data and any objects other than circles could be used to represent the buyers and sellers (and inherently, there respective offers also). (Moshal, abstract, [0003] [0006] [0027]).

The claimed invention uses a known technique to improve a similar device in the same way; applies a known technique to a known device ready for improvement to yield predictable results; and known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Re Claims 33, 41 and 49:** Moshal discloses the claimed invention supra but fails to explicitly disclose wherein the one or more offers comprise asks only from sellers computers on an approved vendor list (AVL).

Official Notice

Official Notice is taken that it is old and well-known for buyers and sellers to limit their business transactions to preferred parties. Specifically, it was old and well known to provide wherein the one or more offers comprise asks only from sellers computers on an approved vendor list (AVL).

For example, preferred lists are used in auctions, shopping, online transactions etc. (Reamer, abstract; [0016] [0018] [0021]; claims 2,3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Moshal by adopting the teachings of Reamer to provide system/method/software, wherein the user is a buyer and the offers comprise asks only from sellers on an approved vendor list (AVL).

One would have been motivated to avoid fraud, maintain business related and facilitate a more efficient experience.

The claimed invention uses a known technique to improve a similar device in the same way; applies a known technique to a known device ready for improvement to yield predictable results; and known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus,

the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARA CHANDLER whose telephone number is (571)272-1186. The examiner can normally be reached on M-F, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571)272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC

***/JAGDISH N PATEL/***  
**Primary Examiner, Art Unit 3693**